



THE LAW OFFICE OF

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Civil Rights
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February 5, 2025

VIA ECF

Honorable Judge Gabriel Gorenstein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Sai Malena Jimenez-Fogarty v. Thomas Fogarty, et al.*
Case No.: 1:24-CV-08705-JLR

Dear Judge Gorenstein:

This office represents the plaintiff, Sai Malena Jimenez-Fogarty in the above captioned matter. Counsel writes with a two-fold purpose. First, to inform the Court per Your Honor's *Order* of February 3, 2025, to address the issue of service of process on the three (3) defendants who have failed to appear in this matter at this time. Second, to request a pre-motion conference, pursuant to Your Honor's Individual Rules of Practice, to file a Motion for Default against these same three (3) defendants for failure to appear in this matter pursuant to the Rule 12 FRCP.

According to the Proof of Service filed with this Court via ECF on December 27, 2024, the Summons and Complaint were served by Manuel Gomez on November 18, 2024 at the usual place of business of Judge Sherri Eisenpress and Judge Thomas Zugibe, which is located at Rockland County Supreme Court, 1 South Main Street, New City, NY 10956. The documents were properly left with the supervising clerk in the Office of the Chief Clerk, which is considered proper service, as she is a person of suitable age and discretion who is employed at the court, is in charge, was readily accessible at the time of service and is a legally designated agent to receive service on behalf of the Judges. Mr. Gomez videotaped his actions to ensure there would be no discrepancy regarding service, as the Clerk refused to give her name, but he was able to provide me with a complete description of the Clerk who was served. With the Court's permission, Mr. Gomez is willing to amend his affidavit (Dkt. 38-2) to include this description of the individual. Additionally, it would be difficult to believe that Judge Eisenpress and Judge Zugibe are unaware of the matter currently pending in which they have been named as defendants, because the relationship between the judges and their co-defendants, Ashley Kersting and Nicole DiGiacomo, extends beyond the professional realm and outside of the

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Jimenez, the retaliation, and the violations of her parental rights which she has been subjected to by Judge Zugibe, Thomas Fogarty, Ashley Kersting and Nicole DiGiacomo, have increased since she initiated this action. Therefore, in light of the above, Plaintiff respectfully believes proper service has been effected on the Judicial defendants.

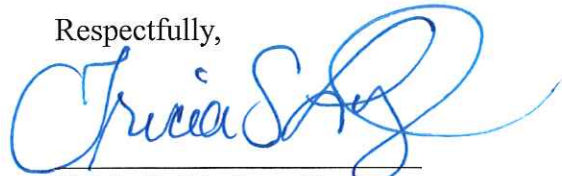
According to the Proof of Service, Laura Marino was personally served with the Summons and Complaint on November 18, 2024, at 4 Theis Lane, Blauvelt, NY 10913. **(Dkt. No. 38-2)**. This is the marital residence of Plaintiff and Defendant Thomas Fogarty. Ms. Marino has been residing in the marital residence with co-defendant Thomas Fogarty since Ms. Jimenez-Fogarty was forced out of her home with only the clothes on her back. Ms. Marino not only accepted service for herself at the residence on this date, but she simultaneously accepted service on behalf of Thomas Fogarty, and Mr. Fogarty appears in this matter via counsel. Therefore, Ms. Marino is fully aware that she has been named as a defendant in this case and has simply chosen to disregard the matter.

In light of the foregoing, Plaintiff requests a pre-motion conference, to seek leave to file a Motion for Default Judgment against Judge Thomas Zugibe, Judge Sherri Eisenpress, and Laura Marino for failure to answer the original Summons and Complaint which were properly served on November 18, 2024, as the time to answer expired on December 10, 2024. "A plaintiff may seek a default judgment in a lawsuit where the defendant fails "to plead or otherwise defend." Fed. R. Civ. P. 55(a)-(b). The Summons and Complaint in this action were both filed on November 15, 2024, and properly served on each defendant, via process server, on November 18, 2024. The deadline to answer the Complaint was December 9, 2024. Proof of Service was filed via ECF on Pacer, on December 27, 2024. To date, neither Judge Sherri Eisenpress, Judge Thomas Zugibe or Laura Marino has appeared in this matter to Answer or defend against the claims alleged in the Complaint or the Amended Complaint. Plaintiff therefore requests that the court schedule a pre-motion conference or grant her leave to file a Motion for Default Judgment as each of the non-appearing defendants were properly served, have failed to answer the complaint or defend themselves against the claims. Instead, they have determined to disregard and ignore said Summons and Complaint, which is a glaring demonstration of contempt for this Court.

Please note, if *Your Honor* finds that service was not proper on any of the non-answering defendants, Plaintiff requests leave to attempt service on the defendants once again.

We thank the Court for its consideration.

Respectfully,



Tricia S. Lindsay, Esq.

Attorney for Plaintiff

cc: All Counsel of record (via ECF only)